

Monday August 27, 2018

To the Honorable members of the State Board of Elections for the Commonwealth of Kentucky, I am submitting this letter to you today to inform you of several serious issues and concerns that have arisen since I was hired to serve as Executive Director of the State Board of Elections, issues I feel need the immediate consideration of the Members of the Board.

I would like to start by saying that this position has been highlight of my career, and has been more rewarding then I can express in this letter alone. When I took this position, Assistant Director and General Counsel Jennifer Scutchfield and I pledged to each other that we would take our political party hats off and administer the Commonwealth's election systems with a sense of equity and fairness. We agreed we would make no decisions that would benefit one political party at the expense of the other and I feel that, to the best of our ability, we have done that. However, over the past year, both AD Scutchfield and I have been asked by Secretary of State Alison Lundergan-Grimes, and/or a representative of her office, to do things we have found to be inappropriate, unethical and potentially illegal. Both AD Scutchfield and I have protested each of these requests and, in one case, refused to comply, and in response, a campaign of harassment and retaliation by Secretary Lundergan-Grimes has occurred and increased to a point that is now affecting the security and safety of the Commonwealth's election systems.

Therefore, pursuant to KRS 61.102(1), I am notifying you, the members of the State Board of Elections, that I have submitted a referral (similar in description to this report) to the Executive Branch Ethics Commission.

Below is a brief summary of several of the issues and concerns that need the attention of the Board and other relevant regulatory agencies:

- Secretary of State (SOS) staff continue to have access to and use the Voter Registration Database (also known as "VRS") for inappropriate reasons, which include, but may not be limited to, the use of VRS to look up potential SBE state employees during the interview process.

During the discovery process for the lawsuit filed against the SBE and SOS by former SBE Assistant Director Matt Selph for wrongful termination, it was brought to light that SOS staff (during my tenure) have looked up the voter registration and party affiliation information of current SBE staff and potential SBE staff during their interview process. These employees include both merit and contracted employees.

- In or around January 2018, AD Scutchfield and myself were told by SOS staff that we were not to have any communication with members of the State Board of Election that was not first reviewed and approved by the Secretary.

This has isolated SBE staff and precluded us from keeping the bipartisan State Board of Elections informed of concerns and possible conflicts between the interests of the SBE and those of the Office of the Secretary of State.

- On July 3, 2018, Secretary Lundergan-Grimes instructed SBE staff to not comply with a judicially-ordered Department of Justice Consent Decree.

After several months of joint negotiations between SBE counsel, SOS staff and the Department of Justice, the SBE entered into a Federal Consent Decree on July 3, 2018. The consent decree mandated SBE to proceed with, and in a timely manner, the completion of a voter registration address confirmation and inactive voter process. It should be noted that reason for DOJ involvement and ultimately for entering into this consent decree, is the past failure of SBE (under the day to day management of the SOS) to adhere to and/or follow portions of the National Voter Rights Act (NVRA) for the previous six years. On July 3, 2018 US District Judge Tatenhove signed this Consent Decree making it legally binding. Later that same day, I was called in to speak to Secretary Lundergan-Grimes in her office. In this meeting I was specifically told to immediately stop the scanning of all returned voter address confirmation cards, which was in direct contradiction to the consent decree. At that time, SBE had already mailed over 600,000 postcards and had received back over 100,000, all of which were to be scanned. By not scanning the returned cards, we would not be able to generate the second mailing, which was required per the signed consent decree.

After leaving this meeting, having voiced my concern about the nature of this request, both AD Scutchfield and I continued to question the legality of this request to SOS staff. By the following Monday, both AD Scutchfield and I were told by SOS staff that we were allowed to continue the scanning process, however, we were (per SOS staff) to “slow-walk” them. Neither AD Scutchfield or I complied with the demands to either “stop” or “slow-walk” this process. At the time of this report, SBE has scanned approximately 220,000 postcards. It is important to also note that during the negotiations with the DOJ, SOS staff mandated that neither AD Scutchfield (who was, at the time, also the General Counsel to the SBE) nor I were to have any further contact with the DOJ and that all further communication with DOJ would immediately go through outside counsel, Luke Morgan, and SOS staff.

- The Secretary has been given emergency authority from the Board to send poll workers across county lines into any location in the Commonwealth at her discretion.

In our first month at SBE, AD Scutchfield and I identified that many of the Commonwealth’s voting precincts were not being filled with the statutorily required two Democrats and two Republicans. We brought this to the attention of SOS staff along with a three- to four-year plan to holistically fix the problem without damaging it further, either tangibly or by reputation. However, the Secretary brought an emergency regulation to the Board for passage, which, in my opinion, did not fully explain to the Board the complexity of the problem and/or the potential negative externalities of its passage. My main opposition with this regulation was that there was not a reserve of poll workers that represent an equal percentage of party affiliation that could be tapped into. This was made evident before the primary election, when the Secretary launched a statewide media push for the recruitment of poll workers, and the overwhelming percentage

of volunteers were Democrats from Jefferson and Fayette Counties. This is a problem because the current imbalance of poll workers already leans heavily Democratic, therefore, exacerbating the problem of equal representation for both parties. Both AD Scutchfield and I stated we were unwilling to send troops of Democrats throughout the Commonwealth's counties without the equitable distribution of Republicans as well.

- Secretary Lundergan-Grimes has given the Office of the SOS the ability to recruit poll workers, side stepping a process that was built to have checks and balances within the two-party structure. This potentially allows for the Office of the SOS to pick and choose poll workers with no opposing party oversight.

Part of SBE's plan to rectify the imbalance of poll workers, originally presented to SOS staff, was that SBE would create a web service and backend database that would allow both political parties, county Boards of Election and County Clerks to recruit poll workers and further give the voters of Kentucky a place to log in to volunteer, receive information, and potentially training.

The Secretary decided that the Office of the SOS would build the service proposed by SBE. When SBE was consulted, we responded with our concerns that their build timeline was unreasonable to also account for the prerequisite security and stability a system of this complexity and size would need. In the end, they had one SOS developer build this system in less than one week. For comparison, SBE's proposed production schedule for this product would have taken multiple developers several months to design, build and test a system before deployment, ensuring the appropriate stability and security for an election system.

Although my concerns about the security and stability of the platform that was built are incredibly important, I am more concerned with the erosion of the foundation of checks and balances that govern the recruitment and placement of poll workers. The system the SOS has built resides in the office of a politically-elected official, whereas a system built by SBE would have been housed and administered in an office with bipartisan administration and Board oversight.

- The Secretary has requested, and is now in possession of, the names, addresses, counties, precincts and party affiliations of all 15,000 state poll workers. This information was requested by the Office of the SOS in order to mail a letter of gratitude directly from Secretary Lundergan-Grimes on SOS letterhead, prior to one of the most contentious elections for the Commonwealth in many years.

AD Scutchfield and I have, at multiple times, insisted that the Secretary's request be presented to the full membership of the Board, *with a full explanation of its use and history*. We have also suggested that the letter come from the Board on SBE letterhead to remove any perception of inappropriate influence on the November General Election. Additionally, we have requested that the letter be sent after the election, rather than before.

Several weeks ago, a member of the SOS staff pulled me aside and requested that I send this poll worker file to the Secretary and not tell SBE staff that I had done so. After SBE staff's continued reluctance in sharing the information with the Office of the SOS, we were notified by Assistant Secretary Galyon that we were to "immediately" comply with the request, referencing in an email the KRS code that states the Secretary is the Commonwealth's Chief Election Officer.

These last three complaints may or may not seem fairly innocuous individually, however they must be placed in an appropriate context. The Executive Branch Ethics Commission Advisory Opinion 10-01 released on March 19, 2010, answered the question of what authority the Secretary of State has to influence a statewide election, specifically, when running for another elected office. These are the three most salient parts of this opinion:

"The Secretary of State does not have access to the Statewide Voter Registration Database."

"If any one individual had the intent to affect a statewide race, that person would need the complicity or acquiescence of a majority of the more than 14,300 precinct workers..."

The Secretary "quite simply, under normal circumstances, lacks the ability to affect the election's outcome. So long as the Secretary of State remains cognizant of the Executive Branch Code of Ethics during the election process, and there is no reason to believe he (Secretary Trey Grayson) will do otherwise, it seems unlikely that his participation would affect the public's confidence in the integrity of the executive branch."

The full Opinion can be found at: <https://ethics.ky.gov/Advisory%20Opinions/10-01.pdf>

The legislators who created the laws that govern our elections placed a system of checks and balances within them; checks and balances that would allow no one individual or one political party to have an unfair advantage within the system. During Secretary of State Alison Lundergan-Grimes term in office, many of these checks have been slowly chipped away. To illustrate this point, neither former Secretary of State, Trey Grayson, nor his staff, had access to the voter registration database and yet Secretary Lundergan-Grimes has given herself this access and continually uses it for inappropriate reasons. And, this use of the VRS has taken place despite the strikingly similar protests of **multiple** Kentucky SBE Directors (of both political parties) who have been terminated at the Secretary's recommendation.

Further, the recruitment of poll workers has always been the responsibility of the county political parties and county boards of elections *at the local level*. And yet, Secretary Lundergan-Grimes has now consolidated this authority within her office giving herself or representatives the ability to both recruit (without any oversight from County Clerks or the opposing political party) and place poll workers from the county of her choice into counties across the Commonwealth. I am not suggesting that the Secretary has, or plans to, manipulate the Commonwealth's elections, however, the damage done is in the appearance of this ability and to the confidence the voting electorate must have in our elections being free and fair, unfettered by corruption and malfeasance.

In retaliation to my protest of the items above and other actions, Secretary Lundergan-Grimes has yelled at me, screamed at me, and spoken to me in derogatory terms that have offended

me to the core of who I am as an individual. In every instance this has taken place, it was a direct reaction to me bringing up my concerns as to the ethical appropriateness of a specific issue (several of these incidents of harassment were witnessed by both SOS staff and SBE staff). It should be noted that in the majority of these instances my protest took the form of me suggesting "this might be something the Board should look at" and not a direct defiance. It is my understanding, through the testimony of others, that my predecessors were treated in this same manner as well, and that on some occasions this was done in the presence of SBE staff. I say this so you will understand this is not an isolated incident, but rather a pattern of behavior, a pattern of hostility, abuse and retaliation not specific to myself alone.

On a regular basis, both the Secretary and SOS staff speak of the Commonwealth's 120 County Clerks in disparaging terms. It has been explained to AD Scutchfield and I that there are "good clerks and bad clerks," the inference being some are Democrats and others are Republicans. If a Clerk is deemed to be "too Republican" or a Clerk unwilling to work with the Secretary on her terms, we have been told to not work with these individuals. It is important to understand why this impacts the working relationship between County Clerks and SBE. In short, SBE has been hamstrung in its abilities to serve the entirety of the Commonwealth; to exclude a Clerk, any clerk, is to exclude an entire county of registered Kentuckians and is unacceptable on any level. In working with the 120 County Clerks and their deputies (regardless of party affiliation), I have found a group of individuals who truly exemplify what it means to be a Kentuckian. I have found them to be intelligent, hardworking, thoughtful and fiercely independent to the benefit of the men and women whom they have sworn an oath to serve. And, with very limited resources, they administer the Commonwealths election systems and elections with excellence.

Over the past several weeks this situation has come to a point in which I now have no other option but to communicate my concerns with you, the Board, and with the Executive Branch Ethics Commission. I have come to the conclusion that what was a hostile work environment has now intensified to a) involve my family and b) endanger SBE's ability to safeguard our election systems. More importantly, it has grown past my ability to handle internally.

At the beginning of August, Secretary of State Lundergan-Grimes appointed a new Assistant Secretary. When Assistant Secretary of State Erica Galyon started in her new capacity, one of her first interactions with SBE was the collection of the poll worker information (referenced above). Both AD Scutchfield and I expressed our concerns and asked that the Secretary take this request to the Board. After the meeting I also expressed to her (as my direct supervisor) that not only did this make me uncomfortable, but that in previous situations where I voiced my concerns I was met with harassment. Specifically, I told her that I had been yelled at, screamed at and spoken to in derogatory terms, and that I was no longer willing to accept this. As of Friday, August 24, 2018, my HR representative has not been contacted about this claim, nor has ASOS Galyon proposed any remedy that would rectify this serious matter.

Instead, over the past weeks, several events have taken place that have led me to this letter:

- At some point on or around August 13, 2018, Secretary Lundergan-Grimes personally contacted a member of my immediate family (whose name I do not wish to include in this statement). On this call, she stated that I was not being loyal to her personally, that I was not doing what I was told and that I was being hostile towards her. My family member was incredibly offended by this call and notified me promptly.

In my opinion, this call was not made for my family member to “deal with” me, this call was made so that I would understand that I have family members that work in similar arenas, and that their livelihoods can be affected by my unwillingness to equivocate to the Secretary’s demands. It is one thing to suffer in a hostile work environment, especially when the person harassing you is an elected official, as there is often very little recourse or relief, but when that harassment and threatening behavior turns towards your family members, it has gone past the point of any tolerance. There is no circumstance that permits the threatening of one’s family, period.

- After several months of planning, SBE and the State Fusion Center were to take part in a training session that would include multiple state agencies, in the preparation and response for a statewide cyber-attack. In my opinion, our local officials (for SBE that is the County Clerks) need as many resources and training opportunities as we can offer them. Because of this, I asked the Fusion center to include four of our County Clerks, and we tailored much of the training to be specifically for Clerks. Prior to the training, and after I made my complaint of harassment to ASOS Galyon (only a week and a half away from this event), I was told that the Secretary was not made aware of this training and that she did not approve it. I was then told to call each of these Clerks and cancel this training. I was also notified that SOS staff would be attending the training in their place. I had made the SOS staff aware of this event several months prior and had asked Fusion Center Director Jason Childers to also make SOS staff aware of this event (as this was a Fusion Center event and not run by SBE), and I know for a fact that he did. When I reminded ASOS Galyon of this, I was told it did not matter, and that the Secretary had made her decision. It is my opinion that the cancellation of this training was meant to embarrass me with Clerks in retaliation for my complaint made to ASOS Galyon. Unfortunately, the only thing it did was make the Commonwealth’s election officials less prepared for a very real and serious challenge.
- SBE runs a large and very complicated enterprise level system. VRS and the other software solutions operated by SBE should be operated by 10 to 15 IT and software development professionals, at a minimum. At this current date we have four (4); two (2) IT professionals and two (2) software engineers. We are also short-staffed on the administrative side, but that is not relevant to this situation. Several months ago, AD Scutchfield and I realized that we could hire at least 3 more engineers if we rewrote a grant that pays for our military and overseas voting portal. Because this grant was originally processed through the Office of SOS we worked with SOS staff to redraft and resubmit this to the federal government (the grantor) and were granted the funds. After weeks of reviewing applications and administering personnel interviews, we had narrowed down to one applicant to fill one of the senior engineers positions. After our interview with this candidate, we let SOS staff know that we were ready to offer this individual a position. We were first told that ASOS Galyon would need to also interview this individual, and we facilitated this interview. After my continued requests to SOS staff to allow us to move forward with hiring, we were told that Secretary Lundergan-Grimes would also need to interview this individual, which we also facilitated. After this interview, I was called by the vendor who was confused, as was the applicant, because it had been conveyed to the applicant during the interview that he would not be working at SBE but rather for SOS at the State Capitol. Ultimately, we still have never

been notified of this change, however, the remaining interviews that had been set up through SBE have now been moved to SOS as well, and to my knowledge, the original applicant still has not been offered any position.

This concerns me for several reasons, besides of the poor way in which we have treated both the applicant, as well as the vendor, and the damage this does to SBE's ability to recruit qualified candidates in the future. Much of my concern stems from the appearance that this is clearly tied to the retaliatory behavior towards me. Similar to the cancelling of the Fusion Center training, this does not hurt me as much as it creates a failure point in the protection and stability of our election systems. The Secretary is more than aware of how short staffed SBE is and this is beyond negligent in both its action and reasoning.

I was not born in Kentucky, but over the past several years it has become my adopted and forever home, a home where I have found community and fellowship. A community where I have found my neighbors, my fellow Kentuckians to be honest, hardworking and resilient in the face of any challenge. I say this because in a time of political contention and contempt, I have found a workplace that sees not our differences in policy and ideology, but sees our sameness in our love for home and family, and for community and Commonwealth. I am privileged to come to work every day and work with individuals of amazing character, with an intense drive and passion to protect our system of governance and its foundational underpinning, the Commonwealth's Election Systems.

I am fairly confident that once I send this letter, any career I had or would have had as a public servant in government is over. Despite the fact that I have been the one who has been harassed (for questioning the ethical nature of the Secretary's requests), and despite the fact I have taken the appropriate steps in notifying my direct supervisor of the unethical nature of these requests as well as the retaliatory action taken by the Secretary, I am now in a position where I will be penalized for doing the right thing. However, given the choice between the failure of the Commonwealth's Election Systems and my ability to continue in a career that I love, I will choose the safeguarding of our election systems. Despite being the second person to come forward in less than a year to make similar accusations, my genuine hope is that in coming forward, the State Board and all relevant regulatory agencies will take action to protect our election systems and the reputation of the Commonwealth's elections.

I would most respectfully recommend to the Board the following actions:

- 1) The State Board of Elections resumes the responsibility of all day-to-day SBE operations.
 - The Board has given Secretary of State Alison Lundergan-Grimes the responsibility of the day-to-day management of SBE administration and staff. Due to the current conflict and hostile work environment created by the Secretary and SOS staff, contact between the offices should be discontinued until after these issues and concerns have been considered and adjudicated by the Board.
- 2) The Board request that the Commonwealth's Executive Branch Ethics Commission conduct a thorough investigation of these and any other allegations and assertions.
 - Due to the nature of the relationship between SOS and SBE, it is suggested an advisory opinion be created to better define the relationship between SOS and SBE staff to adhere to moving forward.

- 3) The Board request the Commonwealth Office of Technology (COT) review SBE systems and safeguards and report all findings to the Board.
 - The Board should not have to rely only on internal SBE staff assessment of SBE systems alone, they should have access to and receive an unbiased report about the health of SBE systems. This will help ensure that all current work product meets and adheres to industry best practices and standards in line with the resources provided to SBE.
- 4) The Board recommend the State Auditor begin an audit of the poll worker volunteer portal created by SOS.
 - Due to the inability of any bipartisan checks and balances related to the new poll worker recruitment portal housed and maintained by SOS staff, an audit should be conducted. The audit should specifically review
 - how many individuals volunteered through this portal, and if all of those individuals have been appropriately and timely referred to their resident home county Board of Elections.
 - How this data is stored and maintained, and whether or not it meets current standards for the protection of election systems and critical infrastructure.
- 5) The Board request information from relevant agencies (Federal Elections Commission, Kentucky Registry of Election Finance and the Kentucky Finance and Administration Cabinet) related to the appropriateness of all SBE contracts.
 - Due to the continued use of vendors who SBE administration has requested not be used, due to security and or work product concerns, and that despite these protests SOS staff continues to use these vendors on behalf of SBE often without the foreknowledge of SBE, it is recommended that an audit be conducted to determine the relationship between any and all vendors, their owners, subsidiaries, employees and or all contractors used by SBE who may have given or donated campaign funds to any and all SOS staff including, but not limited to, Secretary Lundergan-Grimes, and any Political Action Committees associated with said campaigns.
 - All resulting information should be passed on to the relevant investigative body for further action.
- 6) The Board request an investigation from the State Personnel Cabinet to determine if any laws or regulations were violated by the Secretary's use of the VRS to look at the voter and party registration information of state merit employees.
 - If a violation of personnel regulations has been violated, the Commonwealth Attorney General should be contacted and notified of any possible wrongdoing.
- 7) The Board request an investigation by the Attorney General into the veracity of the claims recently made by an SOS employee about Secretary Lundergan-Grimes and her staff's misuse of the VRS database and the potential harm to the State Board and Commonwealth Election Systems. Further, if there is any merit to these claims, the FBI should be contacted to perform a forensic analysis of all relevant data and systems associated with this matter.
 - Please see attached addendum (per KRS 61.878 E,F, security systems being exempted from open records).

Thank you for your time and consideration. I serve at the Board's pleasure and I am available to speak with you at your discretion.

Sincerely,

A handwritten signature in blue ink that reads "Jared Dearing". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Jared Dearing

Executive Director

State Board of Elections